

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

FREEDOM FROM RELIGION FOUNDATION, INC,

Plaintiff,

v.

Case No.: 08-cv-1105

MANITOWOC COUNTY, WISCONSIN  
BOB ZIEGLEBAUER, Manitowoc County Executive,  
And JEFFREY BEYER, Manitowoc County  
Public Works Director,

Defendants.

---

**ANSWER AND AFFIRMATIVE DEFENSES**

---

The defendants Manitowoc County, Bob Zieglebauer and Jeffrey Beyer, by their attorneys, Crivello Carlson, S.C., submits the following Answer to the plaintiff's Complaint:

**INTRODUCTION**

"The First Amendment, however, does not say that in every and all respects there shall be a separation of church and state. Rather, it studiously defines the manner, the specific ways, in which there shall be no concern or union or dependency one on the other. That is the common sense of the matter". Mr. Justice Douglas speaking for the majority in Zorach v. Clauson, 343 U.S. 306, 312 (1952).

1. Answering ¶ 1, deny that the defendants have violated the Establishment Clause of the First Amendment or 42 U.S.C. § 1983; as further answer, deny.

2. Answering ¶ 2, admit.

3. Answering ¶ 3, admit.

4. Answering ¶ 4, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

5. Answering ¶ 5, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

6. Answering ¶ 6, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

7. Answering ¶ 7, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

8. Answering ¶ 8, deny.

9. Answering ¶ 9, admit that Manitowoc County is a municipal entity organized and existing pursuant to Wisconsin law; as further answer, deny.

10. Answering ¶ 10, admit that Bob Ziegelbauer is an employee and official of Manitowoc County who at all times has acted within the course and scope of his authority and employment; as further answer, deny.

11. Answering ¶ 11, admit that Jeffrey Beyer is an employee of Manitowoc County who at all times has acted within the course and scope of his authority and employment; as further answer, deny.

12. Answering ¶ 12, deny.

13. Answering ¶ 13, admit that the claims against the City of Green Bay were dismissed by the United States District Court for the Eastern District of Wisconsin; as further answer lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting plaintiff specifically to its proof thereon.

14. Answering ¶ 14, deny.

15. Answering ¶ 15, admit that a display had been erected; as further answer, deny.

16. Answering ¶ 16, admit that the component pieces of the display have been described; as further answer, deny.

17. Answering ¶ 17, admit that the component pieces of the display have been described; as further answer, deny.

18. Answering ¶ 18, admit that the display was present during the time period alleged and that it has now been removed; as further answer, deny.

19. Answering ¶ 19, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

20. Answering ¶ 20, deny.

21. Answering ¶ 21, affirmatively allege that the Catholic Women's Club has erected similar displays on the property described in past years, perhaps dating to 1946; as further answer, deny.

22. Answering ¶ 22, affirmatively allege that the display has been constructed with the consent of Manitowoc County; as further answer, deny.

23. Answering ¶ 23, deny that the plaintiff has completely and correctly described the comments and position of the defendant Ziegelbauer; as further answer, deny.

24. Answering ¶ 24, deny that the plaintiff has completely and correctly described the comments and position of the defendant Ziegelbauer; as further answer, deny.

25. Answering ¶ 25, deny.

26. Answering ¶ 26, deny.

27. Answering ¶ 27, deny.

28. Answering ¶ 28, deny.

29. Answering ¶ 29, deny that the plaintiff has described the supervisor's comments completely and correctly; as further answer, deny.

30. Answering ¶ 30, admit that the defendant Ziegelbauer's commented that the display "looks wonderful"; as further answer, deny.

31. Answering ¶ 31, deny.

32. Answering ¶ 32, deny.

33. Answering ¶ 33, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

34. Answering ¶ 34, deny.

35. Answering ¶ 35, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting the plaintiff specifically to its proof thereon.

36. Answering ¶ 36, deny.

37. Answering ¶ 37, deny.

38. Answering ¶ 38, deny.

39. Answering ¶ 39, deny.

40. Answering ¶ 40, deny that the plaintiff has completely and correctly described the holdings and contents of the cited decisions.

41. Answering ¶ 41, deny that the plaintiff has completely and correctly described the holdings and contents of the cited decisions.

42. Answering ¶ 42, deny.

43. Answering ¶ 43, deny.

44. Answering ¶ 44, deny.

45. Answering ¶ 45, deny.

46. Answering ¶ 46, deny.

47. Answering ¶ 47, deny.

48. Answering ¶ 48, deny.

49. Answering ¶ 49, deny.

50. Answering ¶ 50, deny.

51. Answering ¶ 51, admit that the actions of the individual named defendants were within the course and scope of their authority and employment with Manitowoc County; as further answer, deny.

52. Answering ¶ 52, deny.

53. Answering ¶ 53, deny.

54. Answering ¶ 54, deny.

55. Answering ¶ 55, deny.

56. Answering ¶ 56, deny.

57. Answering ¶ 57, deny.

58. Answering ¶ 58, deny.

59. AS AND FOR affirmative defenses to the plaintiff's Complaint, these answering defendants present the following:

- a. The plaintiff's Complaint contains claims which fail to state a claim upon which relief can be granted as against these answering defendants.
- b. The Court lacks jurisdiction based upon mootness.
- c. The plaintiff lacks standings pursuant to these allegations.
- d. The defendants are immune from suit under common law and statutory immunities and qualified immunities.
- e. To the extent that the plaintiff purports to state claims under Wisconsin law, they are subject to the limitations, prerequisites and immunities contained within Wis. Stats. § 893.80.

WHEREFORE, Manitowoc County, Bob Zieglebauer and Jeffrey Beyer respectfully requests judgment as follows:

- a. for a dismissal of the plaintiff's complaint upon its merits;
- b. for the costs and disbursements of this action;
- c. for reasonable actual attorneys fees pursuant to 42 U.S.C. § 1988;
- d. for such other relief as this court deems just and equitable.

Dated this 20th day of January, 2009.

BY: /s Raymond J. Pollen

RAYMOND J. POLLEN

State Bar No.: 1000036

REMZY D. BITAR

State Bar No.: 1038340

Attorneys for Manitowoc County, Bob Ziegelbauer and  
Jeffrey Beyer

Crivello Carlson, S.C.

710 North Plankinton Avenue

Milwaukee, Wisconsin 53203

414-271-7722

Email: [rpollen@crivellocarlson.com](mailto:rpollen@crivellocarlson.com)

[rbitar@crivellocarlson.com](mailto:rbitar@crivellocarlson.com)